

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO. 04-10956REK

ERNEST OGLETREE :
Plaintiff :
 :
v. :
 :
CITY OF ATTLEBORO, :
STURDY MEMORIAL :
HOSPITAL, INC., JAMES G. :
MACDONALD, DOUGLAS :
JOHNSON, MICHAEL :
BARTUCCA, ROBERT ASTIN, :
AND LEWIS RHEAUME :
Defendants :
 :
 :

MOTION TO INSPECT SOCIAL SECURITY DISABILITY INSURANCE RECORDS

The Defendants, Sturdy Memorial Hospital, Douglas Johnson, Robert Astin and Lewis Rheaume respectfully move this Honorable Court for an order for the Keeper of the Records for the, **Keeper of the Records, Social Security Administration, 625 J.F.K. Federal Building, Boston, MA 02203**, to produce the below-described records, such records being kept subject to the provisions of Massachusetts General Laws, Chapter 111 and being admissible under the provisions of M.G.L. c. 233, § 79G for Plaintiff, **Ernest Ogletree, Date of Birth 11/30/61**.

The documents requested comprise, including but not limited to, all documents pertaining to any requests for, and/or applications for, disability insurance, payment of medical bills incurred by said Ernest Ogletree, whether or not said applications were by Ernest Ogletree and/or by any licensed healthcare provider; all documents pertaining to any payments or denials made by Social Security Disability, on behalf of said documents pertaining to the medical, billing and insurance records of Ernest Ogletree. The documents are to include any requests for, and/or

applications for, payment of medical bills incurred by said Ernest Ogletree on behalf of Ernest Ogletree, whether or not said applications were by Ernest Ogletree and/or by any licensed healthcare provider; all documents pertaining to determination of disability or denial of said determination, any payments made by Social Security Disability, on behalf of said Ernest Ogletree; all documents pertaining to any refusals and/or rejections of requests for payment of medical insurance or disability benefits for healthcare services provided to said Ernest Ogletree.

FOR CAUSE, plaintiff alleges violation of the Massachusetts Civil Rights Act, False Imprisonment, Assault, Battery, intentional and negligent infliction of emotional distress against the defendants, Douglas Johnson, Robert Astin and Lewis Rheume and vicarious liability against the defendant Sturdy Memorial Hospital. Specifically, the plaintiff, Ernest Ogletree, alleges that the defendants were negligent in connection with injuries sustained by Mr. Ogletree at Sturdy Memorial Hospital. Specifically, the plaintiff (depending on different accounts of events) claims he was assaulted by security personnel, Douglas Johnson, Robert Astin and Lewis Rheume at Sturdy Memorial Hospital in connection with his arrest by the Attleboro Police Department on the premises. The plaintiff alleges that as a result of the defendants' negligence, the plaintiff sustained injuries. The plaintiff further alleges that he has suffered damages including severe and permanent physical and emotional injuries and lost earnings and lost earning capacity. The plaintiff has applied for and received Social Security Disability Income since the date of the incident. The records are directly relevant to the plaintiff's claims of lost earnings and lost earning capacity.

Since the ability of the Defendants to defend the suit depends largely on what, if any, damages were suffered by the Plaintiff, including the status of his current care and treatment, his alleged disability and his alleged lost earnings and lost earnings capacity, receipt of the records is

necessary in this case and does not violate Plaintiff's privacy.

The disability determination and status of Mr. Ogletree subsequent to the incident will be a key issue at trial. For example, whether Mr. Ogletree has been determined temporarily and/or permanently disabled, whether he had preexisting conditions and/or disabilities and whether he is able to return to work; will go to the issue of damages as well as defendants' defenses which will be the central issue at the trial of this case. The information sought by Defendant concerning the plaintiff's Social Security Disability records is relevant for purposes of the course of and interruptions in medical care.

The Defendant intends to use this information to prepare for the impeachment of the plaintiff as a witness at trial, and to investigate any additional facts that may lead to the discovery of admissible evidence at trial. The Defendant, by counsel, certifies that any Social Security Disability information will be used for trial strategy only and/or impeachment purposes on the issue of Mr. Ogletree's injury and alleged damages, credibility, and to investigate other areas of discovery which may be revealed by the plaintiff's Social Security Disability records. The Defendants, by counsel, will not otherwise disclose the Social Security Disability information obtained as a consequence of this order to unauthorized persons as required by law. A proposed Order is attached hereto.

The Defendants, by counsel, submits that there is good cause for this Court to issue an Order releasing records of the Social Security Administration pertaining to Ernest Ogletree.

WHEREFORE, the Defendants, Sturdy Memorial Hospital, Douglas Johnson, Robert Astin and Lewis Rheume, respectfully request that this Court allow their Motion for Inspection and Copies of Social Security Disability Insurance records, as such information is critical to the ability to prepare for trial.

Respectfully Submitted,
The Defendants,
Sturdy Memorial Hospital,
Douglas Johnson, Robert Astin and
Lewis Rheaume,
By their attorney,

/s Allison K. Gurley
Allison K. Gurley, Esq. BBO#647494
Foster & Eldridge, LLP
One Canal Park, Suite 2100
Cambridge, Massachusetts 02141
(617) 252-3366

Dated: 1/31/07